

must act soon, and we must act completely, to end the three percent withholding provision entirely. I urge my colleagues to support this legislation.

NATIONAL BREAST CANCER AWARENESS MONTH

Mr. BLUMENTHAL. Mr. President, I rise today to recognize October as National Breast Cancer Awareness Month. This disease affects people everywhere of all walks of life, taking the lives of approximately 40,000 women in our country each year. In Connecticut, over 3,000 new cases of breast cancer will be diagnosed this year.

The epidemic incidence of breast cancer reminds us of the need for vigilance and vigor in fighting it. I applaud the various advocacy and fundraising organizations that have fought on behalf of the millions of individuals affected by breast cancer. These organizations have been instrumental in raising awareness of breast cancer throughout the health community, public, and Congress. Their work in promoting vital prevention activities and critical funding within government agencies for breast cancer has saved millions of lives, and I thank them for all they have done in the fight against breast cancer.

It is important to remember this month, and always, how critical preventive care is in the fight against breast cancer. I strongly encourage individuals to speak with their doctors about breast cancer to determine what steps they should take to protect themselves. Early detection can significantly lower the risk of death from breast cancer, and I hope women will be reminded this month to seek the preventive care they may need.

While progress has been made on this issue, we must continue to fight against breast cancer. I know my colleagues and I can agree that this fight is a national priority, and I look forward to working with them on this issue in the coming years.

20TH ANNIVERSARY OF THE APPOINTMENT OF JUSTICE CLARENCE THOMAS

Mr. HATCH. Mr. President, on October 20, I paid tribute to the 20th anniversary of Justice Clarence Thomas' appointment to the Supreme Court. I entered into the RECORD following my remarks letters from several of his former clerks giving their own reflections. I ask unanimous consent to have printed in the RECORD today letters from three other clerks: John Eastman, Jeffrey Wall, and Chris Landau.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHAPMAN UNIVERSITY,
Orange, CA, October 12, 2011.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: I was honored to serve as a law clerk with Justice Clarence

Thomas during the Supreme Court's October 1996 Term. The Justice's mentorship, foresight, and depth of understanding of the principles of the American Founding ensured that my service with him would be one of the highlights of my professional career, no matter where that career would lead in the fullness of time. So I am particularly grateful for the opportunity to provide a letter for the Congressional Record commemorating the twentieth anniversary of his confirmation and appointment as Associate Justice of the Supreme Court of the United States.

I also want to express my sincere thanks to you, for your extraordinary efforts in advancing Justice Thomas's confirmation in the U.S. Senate twenty years ago. What a difference twenty years makes! Back then, even after the scurrilous efforts to derail the confirmation failed, there was a sustained effort to belittle the unbelievable accomplishments of this truly great man. Instead of taking American pride in the Justice's phenomenal rise from the depths of poverty to one of the highest offices in the land, a true Horatio Alger story if ever there was one, some of our fellow citizens continued their efforts to discredit. Justice Thomas was merely the "puppet" of Justice Antonin Scalia, we were told, because the two voted together roughly ninety percent of the time. (I never saw a similar claim that Justice Ginsburg was merely the "puppet" of Justice Stevens because of similarly high vote agreement, and I'm still waiting for the "puppet" charge to be applied to Justice Kagan, who this past year agreed with Justices Sotomayor and Ginsburg 94% and 90% of the time, respectively). The New York Times called him the "cruellest" Justice early in his tenure on the bench because of an opinion he authored faithfully adhering to the Constitution's text in a case involving an assault on a prisoner. One federal appellate judge even went so far as to claim that no Supreme Court decision decided by a 5-4 vote with Justice Thomas in the majority should be deemed binding precedent!

And yet, despite all this, the Justice persevered, building over the years such a coherent and profound body of law that even some of his most vocal critics from the early years have had to concede that they were wrong. This past summer, the New Yorker Magazine acknowledged that in "several of the most important areas of constitutional law, Thomas has emerged as an intellectual leader of the Supreme Court." His concurring opinion in the 1997 decision of *Printz v. United States* invited a long-overdue consideration of whether the Second Amendment conferred "a personal right to 'keep and bear arms,'" an invitation that the Court accepted and vindicated a decade later in the landmark case of *Heller v. District of Columbia*. His concurring opinion in *Simmons v. Zelman-Harris*, the 2002 Ohio school vouchers case, has created a virtual cottage industry in legal scholarship assessing his contention that the Establishment Clause was primarily a federalism provision, and thereby not as susceptible to being incorporated and made applicable to the States via the Fourteenth Amendment as the other clauses of the First Amendment, certainly without a more thorough analysis than had previously been provided by the Court.

But the Justice's most profound intellectual leadership on the Court has involved his commitment to our nation's founding principles. He has been at the forefront of the effort to revive the idea that the federal government is one of only limited, enumerated powers, and that it is the solemn duty of the Court to serve as a check against a Congress bent on ignoring the limits on its own power, in order to protect the cause of liberty. Even more important than his dedication to lim-

ited government, though, has been his devotion to the natural rights political theory of the Founders on which the idea of limited government is grounded, particularly as espoused in the Declaration of Independence. The Justice has famously disagreed with Justice Scalia about the role of the Declaration in constitutional interpretation, finding that the principles espoused there are not only relevant but binding. In the 1995 case of *Adarand Constructors, Inc. v. Peña*, for example, Justice Thomas objected to the federal government's use of racial preferences in government contracting, stating that there "can be no doubt that the paternalism that appears to lie at the heart of this program is at war with the principle of inherent equality that underlies and infuses our Constitution." The citation he provided for that simple but important proposition—paragraph two of the Declaration of Independence ("We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness").

When he nominated Justice Thomas to the Supreme Court, President Bush asserted that he was the most qualified person in the country for the job. Many disparaged the President's statement at the time, as so patently false that even the President himself could not possibly have believed it. Instead, it was said, the President was merely claiming that Thomas was the most qualified conservative African-American with judicial experience who could be nominated to fill the seat from which the first African-American to serve on the high Court, Thurgood Marshall, had just retired. And in that category of one, Thomas was the most qualified. Quite apart from the fact that the very idea of race-based allotments of seats on the Supreme Court runs counter to Justice Thomas's deep devotion to a color-blind constitution, the derogatory interpretation of the President's claim has, happily, been thoroughly debunked by the Justice's own jurisprudence. At a time when our understanding of the Law has been infected with a morally relativistic legal positivism, Justice Thomas's revival of the Declaration's recognition that there is a higher law that governs the affairs of man, that our inalienable rights to life, liberty, and the pursuit of happiness come not from any government but by our Creator, and that the sole legitimate purpose of government is to secure those rights, has proved beyond measure that the President was correct.

And increasingly, the Court is following his lead. As the New Yorker magazine recognized, "the majority has followed where Thomas has been leading for a decade or more. Rarely has a Supreme Court Justice enjoyed such broad or significant vindication."

The American founding was one of the great episodes in all of human history. The United States of America became a beacon of hope to the world, a shining city on a hill lighting the path of freedom for all. We had lost that wonderful legacy for a time, but we have begun to reclaim it, in no small part because of the efforts of Justice Clarence Thomas, of those who taught him, and of those who learned and continue to learn from him. Please join me in thanking Justice Thomas for his dedication to our nation's founding principles, congratulating him on this 20-year milestone, and wishing him Godspeed for the next twenty years as he continues his efforts on and off the bench on behalf of the principles of liberty.

With utmost respect and admiration,
JOHN C. EASTMAN,
Henry Salvatori Professor
of Law & Community Service.